

1 IN THE UNITED STATES DISTRICT COURT
2
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4
5 ANDREW S. ANDERSON, No. C 12-5297 YGR (PR)
6 Plaintiff,
7 v. **ORDER DENYING DEFENDANTS'**
8 W. J. WILSON, et al., **MOTION TO DISMISS WITHOUT**
9 Defendants. **PREJUDICE**
10 _____/

11 This is a federal civil rights action. Defendants' motion to dismiss (Docket No. 16) -- on
12 grounds that Plaintiff failed to exhaust his administrative remedies and failed to allege facts
13 sufficient to establish the elements of any of his state law claims -- is DENIED without prejudice.
14 Defendants' grounds for dismissal are more properly raised in a motion for summary judgment. No
15 later than **sixty (60) days** of this Order, Defendants must renew their arguments in support of
16 dismissal by way of a summary judgment motion, in light of the Ninth Circuit's recent ruling in
17 *Albino v. Baca*, No. 10-55702, slip op. at 4 (9th Cir. Apr. 3, 2014) (en banc). The motion need raise
18 only the issue of nonexhaustion, or other procedural concerns. If the motion is denied, Defendants
19 can file a summary judgment motion addressing the merits of Plaintiff's claims.

20 Plaintiff shall file any opposition to Defendants' motion within **twenty-eight (28) days** of the
21 date the motion is filed. Defendants shall file a reply within **fourteen (14) days** of the date the
22 opposition is filed. Defendants are reminded that a motion for summary judgment also must be
23 accompanied by a *Rand* notice so that Plaintiff will have fair, timely and adequate notice of what is
24 required of him in order to oppose the motion. *Woods v. Carey*, 684 F.3d 934, 939 (9th Cir. 2012)
(notice requirement set out in *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998), must be served
concurrently with motion for summary judgment).

25 The Clerk of the Court is directed to terminate Docket No. 16.

26 IT IS SO ORDERED.

27 DATED: April 17, 2014


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE